

Before the Arbiter for Financial Services

Case No. 092/2019

KN and DA respectively

(the complainants/the insured)

vs

Building Block Insurance PCC Ltd

(C63128)

(the service provider/the insurance)

Hearing of the 17 February 2020

The Arbiter,

Having seen the complaint which essentially states that:

The complainants took a pet insurance for their new puppy in September 2018.

The puppy (Jackson) developed breathing problems in late September 2018 leading to hospitalisation and diagnosed with pneumonia with a treatment cost of £554.80.

Breathing problems continued and a further period of hospitalisation was required when Lungworm was diagnosed at a further cost of £652.39.

Perfect Pet insurance failed to honour the claim for these amounts in December 2018.

The complainants challenged the conclusion reached by Perfect Pet by a letter of support from Clinical Director at Rutland Vets confirming that best practice was followed at all times.

Perfect Pet took a long time to respond to their challenge but in March 2019 confirmed their decision to refute the claim.

That Perfect Pet appears to claim that the complainants' vet did not prescribe the necessary treatment for lungworm even though their vets state clearly that worming treatment was given, and that lungworm was not actually prevalent in that area of the UK.

That regardless of these finer points of veterinary practice, they are ordinary busy people with little or no knowledge about what treatment their puppy should or should not have received. They were 'innocent' victims with every right to call on their insurance policy.

They also state that Rutland House Vets are a reputable practice with wide experience of dog and puppy treatment. But whether their practice was right or wrong in this instance, they took their puppy to the vet in good faith and took out the necessary insurance in good faith as well.

That Rutland House Vets bill is only part of their claim and Perfect Pet did not forward an explanation why they did not pay for the Kingsway treatment of pneumonia.

They ask the Arbiter to order the service provider to pay them the veterinary hospital fees totalling £1,207.19

Having seen the reply whereby the service provider is refuting the complaint on the following grounds that:

It is the insurance position that the policy did not respond to the claims due to policy exclusion.

That the vet appointed by the insurance found that up to the 21 August 2018 Jackson was treated correctly. When Jackson was examined on the 28 August 2018, he was prescribed Milbemax which was administered on the 4 September 2018 and there is no record that Milbemax was administered before the 22 October 2018. It should have been administered on the 4 October 2018.

On the 22 October Jackson had clinical signs of an increased respiratory rate which can be a sign of lungworm. On the 29 October Jackson was diagnosed with lungworm.

It is possible that Jackson became infected in between the 7-week gap of the first dosage of Milbemax and the second dosage of Milbemax given on the 22 October 2018. The product should have been given every four weeks.

The symptoms of lungworm are vague and non-specific including breathing problems and inappetence as were seen in Jackson. It is not possible to diagnose lungworm on clinical signs alone. The x-rays seen at Kingsway showed lung changes which could be consistent with pneumonia but could also be seen with lungworm. Without the lungworm test, pneumonia would be considered the working diagnosis and hence that was the treatment that Jackson commenced. Jackson was represented to Rutland House as his condition had not improved. Rutland House carried out a lungworm test the outcome of which was positive, and treatment commenced.

The service provider further states that the veterinary fees for £612.66 which concerned lungworm were rejected by the insurance on the basis of the policy exclusion located in the veterinary fees section of the policy.

Point number 9 states:

'What is not insured

*9. Illnesses that Your pet should be vaccinated against or **where Your pet has not been wormed** or de-flead, including but not limited to lungworm.'*

In respect of the veterinary fees claim for £554.80 which concerned breathing issues, this claim was declined as it was the clinical signs and symptoms noted by the primary vet for the latterly diagnosed lungworm also declined under the above-noted policy exclusion.

MERITS OF THE CASE

Considerations

The Arbiter has two versions: the version of the complainants and the version of the service provider.

The version by the complainants' vet:

- On the one hand the vet at Rutland House explains that lungworm is seen in all parts of the UK but in the North West they only have sporadic cases;
- Many animals get lungworm but with no clinical signs and many of these symptoms can only be discovered under GA which is life-threatening and too late;
- There was nothing specific found on clinical exam of 22/10 except faster breathing and the vet was not concerned at the time. Jackson deteriorated and was diagnosed with pneumonia. Pneumonia cannot be attributed only to lungworm but could be caused by other agents like bacteria, viruses, parasites like lungworm, aspiration of food, grass seeds etc. Lungworm would not be the top differential diagnosis in these cases.
- Jackson was treated with Milbemax in August and October.
- Lungworm is not a disease that can be vaccinated against as a form of prevention and Jackson received all of the normal preventive vaccines required for dogs.

On the other hand, the vet appointed by the service provider stated that:

- Jackson was treated correctly on the 21/08/2018
- On the 28/08/2018 he was given Milbemax and was due to be given another dose on the 4/10/2018 but was given the second dose on the 22/10/2018 instead, therefore, there was a gap of 7 weeks between the first and second dose of Milbemax.

At this point he had clinical signs of an increased respiratory rate. *'This can be a sign of lungworm'* He was investigated over the next week and tested positive for lungworm on the 29/10/2018.

- *'It is possible that he became infected in between the first and second dose of Milbemax as there was a 7-week gap. He should have been vaccinated every four weeks.'*

- *'Lungworm is contracted when a dog ingests lungworm larvae by eating intermediary hosts containing the larvae (slugs, snails, frogs) but also can ingest larvae from slime left by slugs/snails on the ground, in puddles or in outside bowls.'*
- Lungworm cannot be diagnosed on clinical signs alone
- Lungworm is widespread throughout the UK
- There are two types of products to prevent lungworm: Milbemax and Advocate. When these treatments are administered on a 4-weekly basis they will prevent established infections and the destructive migration of larvae through the pulmonary tissues.

From the above (sometimes conflicting) versions, the Arbiter can deduct that:

The complainants took their dog to the Vet whenever they saw that Jackson was not feeling well. It was up to their vet to decide what was good for him and what vaccine to administer by way of cure or prevention.

The Arbiter also notes that professionals do not agree on the occurrence of lungworm in different parts of the UK. However, he is not convinced by the complainants' vet's statement that the lack of a heavy incidence of lungworm in the North West can, in some way, serve vets not to take all the necessary precautions in averting the incidence of lungworm.

On the other hand, the Arbiter notes that both vets have declared that lungworm cannot be diagnosed on clinical signs alone. They also have agreed that there are only two medications available and one of them is Milbemax which was given to Jackson twice before lungworm was finally diagnosed. What the vets seem not to agree upon is the frequency with which Milbemax is to be administered.

The service provider's vet explained that had the vaccine been administered on the 4 October 2018 instead of the 22 October 2018, it could have prevented lungworm because when given 4 weekly it is preventive for lungworm.

This contrasts with the complainants' vet's view that:

*'Lungworm is not a disease that can be vaccinated against as a form of prevention and Jackson received all of the normal preventive vaccines required for dogs.'*¹

The Arbiter has to decide the complaint ***'by reference to what in his opinion is fair, equitable and reasonable in the particular circumstances of the case'***.²

The service provider invokes the policy exclusion in the veterinary fees section of the policy, point number 9, which lists what is not insured.

Basically, it states that:

'Illnesses that Your pet should be vaccinated against or where Your pet has not been wormed or de-fleaed. Including but not limited to lungworm'.

However, this should be read also with *General Condition 3*³ which states that the policy holder *'must ensure'* that the pet is vaccinated and wormed, and vaccinations kept up to date.

The whole question therefore boils down whether the complainants took the appropriate steps to ensure that their dog is vaccinated. There is no controversy that the complainants took Jackson on various occasions to their vet. It is also agreed that among the vaccines administered to Jackson there was Milbemax which has been described by both vets as one of two vaccines that could help in the case of lungworm. However, the vets do not agree about its frequency and also whether it is preventive to lungworm.

If the vets cannot agree between themselves on the way Jackson should have been treated, how can the service provider pretend that the complainants are responsible for not *'ensuring'* that the pet is vaccinated or wormed?

One of the criteria that the Arbiter should apply is the test of reasonableness⁴ in interpreting the policy. Very often this test has been modelled on the test

¹ A Fol. 19

² Cap. 555 of the Laws of Malta, Art. 19(3)(b)

³ A Fol. 97

⁴ Cap. 555, Art. 19(3)(b)

of the ordinary man, the reasonable man, the reasonable person, or what a prudent person would have done in the circumstances.

It is illogical and unrealistic to expect an ordinary policyholder to be in a position to be knowledgeable on what type of vaccine or in what frequency a dog should be treated. The complainants, like any other ordinary persons, acted prudently by taking their dog to a licensed and reputable vet. In that way they tried to '*ensure*' that their pet is being adequately vaccinated and wormed. As a matter of fact, the vet did in reality vaccinate Jackson, but the provider's vet says that the vaccine should have been administered at intervals of four weeks and not after seven weeks.

However, the same vet is not sure whether the dog attracted lungworm because of this eventuality. She only says that there was '*the possibility*' that this could have happened; at the same time, she asserts that lungworm could not be easily detected clinically.

The Arbiter cannot decide on certainties because that it is very difficult to achieve, but as it is the norm, he has to decide on a balance of probabilities. Since the service provider suggests only a possibility, the Arbiter cannot decide that the insurer has proven its defence.

On the contrary, the claimants have proven that they took all the adequate measures to ensure that their dog is vaccinated. The situation would have been completely different if the complainants had acted negligently and did not care for Jackson.

The contract of insurance is one based on utmost good faith. This principle entails that the parties to an insurance contract must act in relation to each other faithfully to a degree higher than one would expect in an ordinary contract. The insured should pay the premium, disclose any material fact which would impinge on the risk being covered, and report any change in circumstance to the insurer. On the other hand, the insurer should reciprocate by doing its utmost to honour the claim.

The Arbiter is not convinced that the service provider acted fairly when it rejected the claim. Insurance terms should be interpreted fairly, equitably and reasonably.

It is not fair to refute a claim by interpreting the policy in such a way as to avoid the claim. When the policy states that the complainant should ensure that the dog is vaccinated it is not meant that an ordinary person should be in a position to know whether the vets have performed their duty professionally or otherwise. There is no conclusive proof that the vet in question did not follow the correct procedures; there is only a doubt based on mere possibility.

An ordinary person can only do ordinary things. It is up to professionals to act diligently and professionally and once the policyholder has done his/her duty of taking the pet for vaccination, he/she are no longer in control over the professional's conduct.

Having considered all the particular facts of the case, the Arbiter firmly believes that the complainants did not infringe the requisites of the policy and acted reasonably and fairly like any other ordinary person would have done in the same circumstances.

For the above-stated reasons, the Arbiter decides that the complaint is fair, equitable and reasonable in the particular circumstances of the case⁵ and is upholding it as long as it is compatible with this decision.

Compensation

The complainants are claiming the total sum of £1,207.19. The quantum of this claim is not contested by the service provider.

Therefore, the Arbiter, in virtue of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, orders Building Block Insurance PCC Ltd. to pay the complainants the sum of £1,207.19.

With legal interest of 8% per annum from the date of this decision until the date of payment.

The costs of these proceedings are to be borne by the service provider.

⁵ Cap. 555, Art. 19 (3)(b)

Dr Reno Borg
Arbiter for Financial Services